

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)
Plaintiff,)
vs.) 4:05-CV-00329-TCK-SAJ
TYSON FOODS, INC., et al,)
Defendants.)

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VOLUME II OF THE VIDEOTAPED
DEPOSITION OF BERTON FISHER, PhD, produced as a
witness on behalf of the Defendants in the above
styled and numbered cause, taken on the 4th day of
September, 2008, in the City of Tulsa, County of
Tulsa, State of Oklahoma, before me, Lisa A.
Steinmeyer, a Certified Shorthand Reporter, duly
certified under and by virtue of the laws of the
State of Oklahoma.

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918-587-2878

A P P E A R A N C E S

FOR THE PLAINTIFFS: Mr. Richard Garren
Attorney at Law
502 West 6th Street
Tulsa, OK 74119

FOR TYSON FOODS: Mr. Robert George
Attorney at Law
2210 West Oaklawn Drive
Springdale, AR 72762

FOR CARGILL: Ms. Theresa Hill
Attorney at Law
100 West 5th Street
Suite 400
Tulsa, OK 74103

FOR SIMMONS FOODS: Mr. John Elrod
Attorney at Law
211 East Dickson Street
Fayetteville, AR 72701

FOR PETERSON FARMS: Mr. Scott McDaniel
Attorney at Law
320 South Boston
Suite 700
Tulsa, OK 74103

FOR GEORGE'S: Mr. Woodson Bassett
Attorney at Law
221 North College
Fayetteville, AR 72701

FOR CAL-MAINE: Mr. Robert Sanders
Attorney at Law
2000 AmSouth Plaza
P. O. Box 23059
Jackson, MS 39225
(Via phone)

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-and-
Mr. Robert Redemann
Attorney at Law
1437 South Boulder
Tulsa, OK 74119
(Via phone)

Ms. Jennifer Griffin
Attorney at Law
314 East High Street
Jefferson City, MO 65109
(Via phone)

FOR WILLOW BROOK:

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1 (Whereupon, the deposition began at
2 9:00 a.m.)

3 VIDEOGRAPHER: We are now on the Record for
4 Volume II of the deposition of Berton Fisher. Today
5 is September 4th, 2008. The time is 9:00 a.m. 09:00AM
6 Would counsel please identify themselves for the
7 Record.

8 MR. GARREN: Richard Garren for the State
9 of Oklahoma.

10 MR. GEORGE: Robert George for the Tyson 09:00AM
11 defendants.

12 MR. McDANIEL: Scott McDaniel for Peterson
13 Farms, Inc.

14 MR. ELROD: John Elrod for Simmons.

15 MR. BASSETT: Woody Bassett for the 09:00AM
16 George's defendants.

17 MS. HILL: Theresa Hill for the Cargill
18 entities.

19 VIDEOGRAPHER: Thank you.

20 BERTON FISHER, PhD,
21 having first been duly sworn to testify the truth,
22 the whole truth and nothing but the truth, testified
23 as follows:

24 CONTINUED DIRECT EXAMINATION

25 BY MR. GEORGE: 09:00AM

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1 that these are written by Soil Conservation Service
2 employees. Now, if there are state employees --
3 that's a conclusion of law as to what I think,
4 whether it's a state sponsored plan or not, but
5 it's -- the animal waste management plans tend to be 01:22PM
6 written by extension people.

7 Q All right. I won't debate with you who writes
8 them. Are you aware of the fact that there are
9 animal waste management plans that have been written
10 for landowners in the Illinois River watershed in 01:22PM
11 Oklahoma that authorize the land application of
12 poultry litter?

13 MR. GARREN: Object to form.

14 A Okay. I'll recognize -- with respect to your
15 question, I would agree that there are nutrient 01:23PM
16 management plans or animal waste management plans
17 that have been written that pertain to lands within
18 the Illinois River watershed that specify the
19 circumstances of disposal of litter on people's
20 lands. 01:23PM

21 Q Okay, and those plans would dictate the
22 allowable rate at which poultry litter can be land
23 applied --

24 MR. GARREN: Object to form.

25 Q -- on specific fields? 01:23PM

1 **A** Yes.

2 **Q** And previously my question was sort of framed
3 within the context of the state of Oklahoma, but
4 those plans, nutrient management plans, are -- have
5 also been written and issued to landowners on the
6 Arkansas side of the basin?

01:23PM

7 **A** I have seen nutrient management plans on the
8 Arkansas side of the basin. It's my understanding
9 that for -- until very recently they were not
10 required.

01:24PM

11 **Q** By whom?

12 **A** Pardon?

13 **Q** Weren't required by --

14 **A** Weren't required by the State of Arkansas.

15 **Q** Do you know the extent to which the poultry
16 companies or any poultry company has required its
17 contract growers to pursue and obtain a nutrient
18 management plan notwithstanding state requirements?

01:24PM

19 **A** I know that there are some instances in which
20 contract growers have had that requirement.

01:24PM

21 **Q** Is that the extent of your knowledge, what you
22 just stated?

23 **A** The extent of my knowledge as I sit here
24 today. I've read a ton of records. I think there
25 are requirements by some contract growers that --

01:24PM

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1 for nutrient management plans for the growers.

2 Q Okay.

3 A I don't recall when that was first
4 implemented.

5 Q All right. The -- now, back to where I 01:25PM
6 started a few moments ago, would you agree that one
7 reason poultry litter is land applied near where
8 it's generated in the Illinois River watershed is
9 because there are landowners that have animal waste
10 management plans that allow poultry litter to be 01:25PM
11 land applied in those areas?

12 A Well, I'm not sure that it requires an animal
13 waste management plan, but there are individuals who
14 would desire to have it applied.

15 Q All right. Let me -- then tell me, do you 01:25PM
16 know whether all land application of poultry litter
17 in the Illinois River watershed today requires the
18 applicator to be licensed?

19 MR. GARREN: Object to form.

20 A Okay. I think we need to break that down into 01:25PM
21 by state.

22 Q If you want to answer by state, that's fine.

23 A With respect to Oklahoma, commercial
24 applicators need to be licensed is my understanding,
25 and if you are applying it to your own land, you 01:26PM

1 have to make an application report. I'm not sure of
2 the licensure requirements if you are applying waste
3 to your own land.

4 Q Okay.

5 A In Arkansas, I am not familiar enough with 01:26PM
6 that state's regulatory structure to have an
7 opinion, but it's possible.

8 Q Is all the poultry litter that is applied in
9 this day and time in the Illinois River watershed
10 subject to rules or regulations in either Oklahoma 01:26PM
11 or Arkansas depending on where the land is?

12 MR. GARREN: Object to form.

13 A I believe that at the present time that is
14 true.

15 Q All right. Are you aware of any circumstance, 01:27PM
16 Dr. Fisher, where poultry litter has been land
17 applied in the Illinois River watershed in
18 violations of the provisions of that landowner's
19 nutrient management plan or animal waste management
20 plan? 01:27PM

21 MR. GARREN: Object to form.

22 A I know of none, but there's also no way of
23 truly checking that.

24 Q Now, in your report at Page 13 where you go
25 into your history discussion of the defendants, you 01:27PM